telegraph company for the joint use of such company and the railroad. MILLS, EM. DOM., Sec. 59; *Tel. Co* v. *Rich*, 19 Kansas, 517; see as to highways, *Julia Building Ass'n.* v. *Bell Tel. Co.*, 88 Mo. 258, and *Pierce* v. *Drew*, 136 Mass. 75.

The decision in the principal case is in accordance with the weight of authority.

SALES—DRAFT WITH BILL OF LADING ATTACHED—LIABILITY OF TRANSFEREE TO CONSIGNEE.—A seller consigned warranted goods to plaintiff buyers and drew a draft on the latter for the price. Defendant bank discounted the draft to which was attached the bill of lading, delivered the goods and bill of lading to plaintiffs who had previously no opportunity to inspect the goods. Consignee brought an action against the bank for breach of warranty. *Held*, bank was not liable. *German American Sav. Bank* v. *Craig, et al* (1903),— Neb. — 96 N. W. Rep. 1023.

The necessary consent of plaintiffs to the substitution of defendant for the vendor in the contract was absent, said the court. Another reason for the conclusion was that such decision harmonized with the understanding of the commercial world and a contrary doctrine would work an unnecessary and injurious restraint on trade. In harmony with the above are: *Hall* v. *Kellar* (1902), — Kan. — 67 Pac. Rep. 518; *Tolerton & Stetson Co.* v. *Anglo-Cal. Bank* (1901), 112 Ia. 706, 84 N. W. Rep. 930, 50 L. R. A. 777. Probably the principal reason for the soundness of the above decisions is based upon the law of negotiable instruments, the assignees of the bills of lading having been bona fide holders of the annexed drafts. See note 49 L. R. A. 679. This phase of the question was not, however, considered in the principal case. The contrary doctrine was laid down in *Landa* v. *Lattin* (1898), 19 Tex. Civ. App. 246, 46 S. W. Rep. 48; *Finch* v. *Gregg* (1900), 126 N. C. 176, 35 S. E. Rep. 251, 49 L. R. A. 679; *Searles* v. *Smith Grain Co.* (1902), — Miss. — 32 S. Rep. 287; *Miller* v. *Bank*, 76 Miss. 84, where the courts did not consider the negotiable instrument phase of the question at all, but held that the assignees of the bills of lading stood in the shoes of the vendors. The only cases involving this question which the Nebraska court found were *Landa* v. *Lattin* and *Finch* v. *Gregg*, *supra*. See 1 MICH. LAW REV. 65, 237, 690. MECHEM ON SALES, —§1816. The Nebraska case is with the weight of authority.

SURETYSHIP—CO-EXECUTORS—JOINT AND SEVERAL BOND—LIABILITY OF SURETIES.—A and B were co-executors of the will of C, and as such gave a joint and several bond. B was also a legatee. A defaulted and B as legatee brings this action against the sureties on the above bond. It was contended by the defendants that the action could not be maintained, because B, being a principal on the same bond, would thereby be suing himself and his own sureties. *Held*, that B could recover. *Municipal Court* v. *Whaley* (1903), — R. I. — 55 Atl. Rep. 750.

In coming to its decision the court held that in the absence of participation by B in the default and in the absence of negligence on his part he was not liable for the devastavit of A. WILLIAMS ON EXECUTORS, p. 1924; *Gaultney* v. *Nolan*, 33 Miss. 569; *Lenoir* v. *Winn*, 4 Desans. (S. C.) 65, 6 Am. Dec. 597; *Peter* v. *Beverly*, 10 Pet. 532, 9 L. Ed. 522. The court further held that the bond being joint and several and not simply joint, it was as if each had given a separate bond with separate sureties. Therefore B was neither suing himself nor his own sureties. *Nanz* v *Oakley*, 120 N. Y. 84, 24 N. E. Rep. 306, 9 L. R. A. 223, reversing 37 Hun, 495; *State* v. *Wyant*, 67 Ind., 25. On its facts, the case is somewhat peculiar, and at first blush the law would perhaps seem to be otherwise than as announced. Yet the deductions are logical and the conclusion is probably sound.